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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10
11 In re:

18-03197-FPC11

12 GIGA WATT, INC.

13 Debtor.
14
15

COMMITTEE REPLY IN SUPPORT
OF EMPLOYMENT OF BEVERIDGE
& DIAMOND AS SPECIAL
COUNSEL

16 **I. PRELIMINARY STATEMENT**

17 The Chapter 11 Trustee in this case has unnecessarily objected to the
18 Committee of Unsecured Creditors of the Giga Watt, Inc. (“**Committee**”)’s motion
19 to retain Beveridge & Diamond (“B&D”) as special counsel to review the Douglas
20 County PUD contract that purportedly has been terminated.

21 **II. FACTUAL BACKGROUND**

22 The Committee has been in discussions with the Chapter 11 Trustee to
23 investigate the Douglas County PUD contract for almost six months. The hurdle
24 for much of this time was finding monies for a retainer to pay B & D. The Trustee
25 has consistently maintained that it could not afford to provide retainer monies for a
26 lawyer such as B & D, but nonetheless encouraged the Committee to pursue such
27 an avenue if they believed there was value in the Douglas County PUD contract.
28 The Committee ultimately solved this problem by fronting the money for a retainer

1 personally.

2 In late August 2019, the Committee wanted to seek formal authorization to
3 pursue investigation or litigation over this asset class. The response by the Trustee
4 to a draft motion for this authorization, *see attached Exhibit A*, was that a motion
5 would be premature, and that the Committee should go out and retain the attorney
6 first. Now that the Committee has taken steps to retain the attorney, the Trustee
7 objects to the very step that it recommended to the Committee, stating that the
8 Committee should first have authorization to conduct the investigation.

9 III. LEGAL ARGUMENT

10 The bankruptcy estate overall finds itself between a rock and a hard place as
11 it historically incurred a substantial amount (\$600,000+) in attorney's fees when it
12 was assumed there were three significant operation centers – Moses Lake,
13 Pangborn, and TNT. Now, however, the Trustee appears to have given up on
14 selling any operations other than the smallest, TNT. For that reason, the
15 Committee wishes to take another look at whether the Pangborn electricity contract
16 – once the crown jewel of the bankruptcy estate – really is gone.

17 Importantly, the Trustee made its conclusion without the involvement of
18 specialized energy counsel, and so the Committee wants to be able to bring in Mr.
19 Christensen from B&D to complete the analysis. Notably, Mr. Christensen's
20 experience includes many years as in-house counsel at a Washington PUD working
21 on energy contracts, as well as many years of private practice representing PUDs
22 and other entities in the energy industry, so he brings expertise in energy-related
23 contracts that the Trustee cannot match. Further, a preliminary analysis has
24 already been conducted (relying on the \$5,000 fronted by Committee members),
25 and that seems favorable enough to continue investigation. Preliminary Analysis
26 will be presented to the Court as **Exhibit B**. The Trustee's objection that the
27 potential litigation is a "roll of the dice" is therefore unfounded.

28 As to the specific technical objections raised by Ms. Egan, the application

1 was not circulated to the general mailing matrix. This is only required when
2 attorney rates (here, \$600 per hour) are sought to be approved in advance. As
3 should be clear from the email sent by the Committee on December 22, 2019, the
4 Committee is not seeking such pre-approval of rate of compensation at present.

5 Further, the Trustee complains that he alone has standing to bring claims
6 against Douglas County PUD. This is true, but ignores the fact that the Committee
7 already requested standing to pursue this specialized litigation, and there is a good
8 faith basis for proceeding. **Exhibits A & B.**

9 Finally, the Trustee implies that Mr. Christensen and his firm may be
10 conflicted out of this representation because they currently are in litigation with
11 Grant County over electricity rate hikes. But the Pangborn facility is served by
12 Douglas County PUD, not Grant County PUD, and the Grant County litigation
13 therefore does not pose any conflict issues. Further, the Grant County litigation
14 challenges rate hikes could render the Moses Lake facility nonviable after April
15 2020. A victory in the Grant County litigation would therefore be a victory for the
16 estate.

17 **IV. CONCLUSION**

18 The Committee would be happy if the Trustee could restore confidence in its
19 vision of the case as a whole, but what the Trustee should not be doing is interfering
20 with the Committee's ability to put in place its own plan.
21

22 DATED this 24th day of December, 2019.

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